IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 10305 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARUNBHAI BACHUBHAI GANJA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 10305 of 2003

MR YOGESH S LAKHANI for Petitioner No. 1-3

MR SUDHANSHU PATEL, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 09/09/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Krina C.Thakkar for ld. counsel Mr. YS Lakhani for the petitioners and ld. APP Mr. Sudhanshu Patel for respondent State.

2. This Cri. Misc. Application is preferred by the petitioners -0riginal accused for quashing and setting aside the complaint being CR No.I.368/2002 registered with Bhavnagar City "A" Division Police Station for the offences punishable under Sections 306, 504, 114 of Indian Penal Code.

3. One of the submissions of Ms. Krina Thakkar for the petitioners is that there is no element of abetment contemplated under Sec.107 of Indian Penal Code and if the allegations as they are accepted , it would be difficult to conclude even prima facie that any of the accused can be termed as abettor within the meaning of Sec.108 of Indian Penal Code.

4. The facts in brief reveal that the petitioners are serving with Bhavnagar Mercantile Co.Op.Bank Ltd. (hereinafter referred to as the Bank) who are facing aforesaid criminal complaint. As per the complainant Nirajbhai S.Bhatt, his uncle Shri Bharatbhai Bhatt who is residing separately from them obtained a loan before about 8 years from the Bank and in the said loan transaction the father of the complainant namely Sharadbhai Bhatt stood as guarantor No.2. That one Dineshbhai was guarantor No.1. According to the complainant, installments of the said loan could not be paid by the uncle of the complainant and Rs.1,36,963.00 were due with interest to be recovered from them. So, the victim felt embarrassed and he committed suicide as he was under pressure of demands made to pay up the loan amount. It is alleged in the complaint that on 26.07.2002, at about 6.00 P.M., the petitioners had been to the father of the complainant and had started abusing him and were pressurising him to repay the amount of loan and the petitioners accused told the deceased that if amount is not paid, his wife and children shall have to suffer.They had also informed that Recovery Officers of the Bank can also exercise powers of Collector and they can seal the place of business. In short, under the threats, the deceased had committed suicide.

5. The nature of resistance placed by ld. APP Mr. Sudhanshu Patel is that the averments made in the complaint should be read as they are and nature of allegations made in the complaint also reveals that an offence under Sec.506 of Indian Penal Code is also committed and, therefore, complaint should not be quashed.

6. I have gone through the averments made in the

complaint and relevant documents. It is difficult to conclude that, prima facie, any of the accused either jointly or individually, had given a great cause to the deceased to commit suicide or instigated or abetted him in the commission of suicide. It appears that under frustration and depression and under disturbed state of mind, the deceased had committed suicide. It is not the case of the complainant that the act of committing suicide was immediately after the departure of the petitioners. Zerox copy of the report submitted to the ld. JMFC, Bhavnagar under Sec.154 of CrPC reveals that all the petitioners had visited the house of the deceased on 26.07.2002 even as per the complaint at about 6.00 to 6.30 P.M., but the incident of commission of suicide had taken place on 29.07.2002. It would not be either legal or logical to co-relate the act of suicide by the deceased and visit of the petitioners to the residential premises of the deceased victim. It is pertinent to note that the petitioners were pressing for repayment of loan amount, in discharge of their official duties.

7. It is not necessary for the Court to reproduce relevant provisions of Sections 107 & 108 of Indian Penal Code, but the scheme of both the sections clearly put all the petitioners out of the compass of the definition of "abettor" and, therefore, the complaint shall have to be quashed.

8. Ms. Krina C.Thakkar has placed reliance on the decision in the case of Pallem Deniel Victor @ Victor Hanter and others v/s State of A.P. rep.by Public Prosecutor, 1997(1) Crimes 499, wherein it has been observed and laid down that to attract the offence of abetment to suicide, intention of accused to aid or instigate or abet the deceased is necessary. It has been further observed that mere non-payment of debt by deceased was not sufficient to attribute intention of abetment to accused petitioner and, therefore, proceedings were liable to be quashed. In view of the facts and circumstances of the case on hand, the ratio propounded in the cited decision would help the present petitioners.

9. In view above and in view of the language of the complaint and narration of the incident, the resistance placed by ld.APP is not found acceptable. On the contrary, the say of the petitioners requires to be accepted and complaint in question requires to be quashed and set aside.

10. For the reasons aforesaid, Cri. Misc.

Application is allowed. Impugned complaint being I.CR No.368/2002 registered with Bhavnagar City "A" Division Police Station against the present petitioners accused is hereby quashed and set aside. Rule is made absolute.

[C.K. BUCH, J]

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